

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KENEL JOSEPH,

Plaintiff,

v.

Case No.: 2:23-cv-901-SPC-NPM

DALE DEAR, DAVID CRISP and
RICK DAVIS,

Defendants.

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OPINION AND ORDER

Before the Court is *pro se* Plaintiff Kenel Joseph's civil rights Complaint. (Doc. 1). Joseph—a prisoner of the Florida Department of Corrections—moves for leave to proceed *in forma pauperis*. (Doc. 2). Because Joseph is barred from doing so under 28 U.S.C. § 1915(g), the Court dismisses this action without prejudice.

Under § 1915(g), a prisoner cannot proceed *in forma pauperis* if “on 3 or more prior occasions, while incarcerated or detained in any facility, [he] brought an action or appeal in a [federal] court...that was dismissed on the grounds that it is frivolous, malicious, or fails to state claim upon which relief may be granted[.]” 28 U.S.C. § 1915(g); *see Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1723 (2020) (“To help staunch a ‘flood of nonmeritorious’ prisoner litigation, the Prison Litigation Reform Act of 1995 (PLRA) established what

has become known as the three-strikes rule.” (citation omitted)). And “[a] dismissal of a suit for failure to state a claim counts as a strike, whether or not with prejudice.” *Lomax*, 140 S. Ct. at 1727.

The Court takes judicial notice of Joseph’s three prior federal lawsuits, all of which were dismissed as frivolous, malicious, or failing to state claim upon which relief may be granted: Cases Nos. (1) 2:23-cv-255-SPC-NPM (failure to state a claim); (2) 2:23-cv-564-SPC-NPM (failure to state a claim); and (3) 2:23-cv-578-SPC-NPM (frivolous). Joseph is not exempt from § 1915(g)’s three-strikes rule, as the Complaint does not allege he is in imminent danger of serious physical injury. *Mitchell v. Nobles*, 873 F. 3d 869, 872 (11th Cir. 2017).

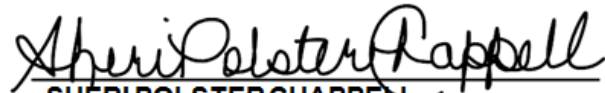
The Court thus dismisses the Complaint without prejudice. If Kenel Joseph wishes to pursue his claim(s), he must file a new complaint—under a new case number—and pay the \$402.00 filing fee.

Accordingly, it is

ORDERED:

1. Kenel Joseph’s Complaint (Doc. 1) is **DISMISSED without prejudice** under 28 U.S.C. § 1915(g).
2. The Clerk is **DIRECTED** to enter judgment, terminate any pending motions and deadlines, and close this file.

DONE and **ORDERED** in Fort Myers, Florida on October 19, 2023.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record